

No. 20-11692

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

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United States of America,

Plaintiff-Appellee,

v.

Reality Leigh Winner

Defendant-Appellant.

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**APPEAL**

From the United States District Court for the Southern District of Georgia  
(Case 1:17-CR-00034-JRH-BKE)

Hon. J. Randal Hall,  
UNITED STATES DISTRICT JUDGE

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**APPELLANT'S UNOPPOSED EMERGENCY MOTION  
FOR LEAVE TO SUBMIT EVIDENCE IN SUPPORT OF APPEAL**

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*Counsel for Appellant Reality Leigh Winner*

**Certificate of Interested Persons**

*United States of America v. Reality Leigh Winner*, Appeal No. 20-11692

Counsel for Appellant Reality Leigh Winner states that the following is a full and complete list of all entities and persons having an interest in the outcome of this appeal:

Aaron, David C., U.S. Department of Justice  
Barnard, Thomas H., Attorney for Appellant  
Bell, Jr., John C., Attorney for Appellant  
Chester, Matthew S., Attorney for Appellant  
Christine, Bobby, L., United States Attorney  
Collins, Laura E., Attorney for Appellant  
Davids, Justin G., Assistant United States Attorney  
Durham, James D., Former Assistant United States Attorney  
Edelstein, Julie A., U.S. Department of Justice  
Epps, Hon. Brian K., United States Magistrate Judge  
Grinter, Alison, Attorney for Appellant  
Greenwood, Nancy, Assistant United States Attorney  
Hall, Hon. J. Randal, United States District Judge  
Larson, Amy E., U.S. Department of Justice  
Mannino, Katherine C., Former Attorney for Appellant  
McCook, Jill E., Former Attorney for Appellant  
Nichols, Titus T., Attorney for Appellant  
Rafferty, Brian T., Assistant United States Attorney  
Robichaux, Mary Susan, U.S. Department of Justice

Rodriguez-Feo, Carli, CISO, U.S. Department of Justice

Solari, Jennifer G., Assistant United States Attorney

Switzer, Brett A., Attorney for Appellant

United States Department of Justice

Whitley, Joe D., Attorney for Appellant

Winner, Reality Leigh, Appellant

No publicly traded company or corporation has an interest in the outcome of this case or appeal.

/s/Joe D. Whitley

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COMES NOW, Appellant Reality Leigh Winner (“Reality” or “Appellant”), who, pursuant to Federal Rules of Appellate Procedure 27 and 28, 11th Cir. R. 27-1, and this Court’s Internal Operating Procedure 5 concerning 11th Cir. R. 28-1, respectfully requests leave to file the attached Declaration in support of her Brief in this matter, filed on June 15, 2020.<sup>1</sup> In support thereof, Appellant avers as follows.

1. As this Court is aware, on April 24, 2020, the district court below (*United States v. Reality Leigh Winner*, No. 1:17-CR-00034 (S.D. Ga.)) denied Reality’s Motion for Compassionate Release under 18 U.S.C. § 3582. Reality made her request in the wake of the unprecedented global pandemic wrought by the novel coronavirus, COVID-19, how that infectious virus may affect Appellant in view of her underlying medical conditions, and the Bureau of Prisons’ (“BOP”) inadequate response to the pandemic.<sup>2</sup>

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<sup>1</sup> A copy of the Proposed Declaration from Reality’s local counsel in Support of her Appellant’s Brief is attached as **Exhibit 1**. Due to restrictions based on the inmates during the COVID-19 outbreak, Reality herself could not receive, execute, and send a declaration; hence, her local counsel has provided this information for the Court’s consideration.

<sup>2</sup> See *United States v. Winner*, No. 1:17-CR-34, ECF No. 349 (S.D. Ga. Apr. 24, 2020).

2. On May 12, 2020, Reality filed her Motion to Expedite this matter given the time-sensitive nature of this particular case,<sup>3</sup> and this Court granted her Motion.<sup>4</sup>

3. On June 15, 2020, Reality filed her Appellant's Brief, arguing, among other things, that the district court erred on multiple fronts in its underlying ruling denying Reality's Motion for Compassionate Release, including by: (a) holding that the administrative exhaustion requirement in 18 U.S.C. § 3582 was mandatory and/or not satisfied in this matter; (b) concluding that it was without authority to determine whether "extraordinary and compelling" circumstances existed in this matter under 18 U.S.C. § 3582(c)(1)(A)(i); and (c) determining that Reality had not carried her burden to demonstrate "extraordinary and compelling" circumstances or, alternatively, by not holding an evidentiary hearing on the Motion for Compassionate Release.<sup>5</sup>

4. On June 29, 2020, the Government filed its Appellee Brief, setting forth its arguments to defend the district court's underlying ruling. In its Appellee Brief, the Government made note of the purportedly *low* numbers of COVID-19 infections at FMC Carswell, the BOP facility where Reality is housed.<sup>6</sup> As of the date of its

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<sup>3</sup> See Reality's Time Sensitive Mot. for Expedited Appeal, filed May 12, 2020.

<sup>4</sup> See Order, dated June 1, 2020.

<sup>5</sup> See *generally* Reality's Br.

<sup>6</sup> See Gov't's Br. at 38, n.14.

filing (just several weeks ago), the Government stated that “zero inmates and one staff member” had tested positive.<sup>7</sup>

5. On reply, Reality noted the currently-spiking numbers, advising that, in just one week’s time, FMC Carswell had experienced an outbreak—indeed, a 4,500% increase—in the number of positive infections at the facility.<sup>8</sup>

6. On July 13, 2020, Reality sought leave to file a Supplemental Brief, which set forth an alarming increase in the number of positive COVID-19 infections at FMC Carswell.<sup>9</sup> As of the date of Appellant’s leave request, the numbers of infected inmates had nearly tripled at FMC Carswell, yielding 134 infected inmates, and 3 infected staff members.<sup>10</sup>

7. While Appellant does not desire to the burden the Court, she wishes to bring to its attention two additional, highly pertinent facts. First, the numbers of positive infections for COVID-19 continue to rise in spectacular and exponential numbers at FMC Carswell. As of the date of this filing, the BOP reports that **510 inmates and 3 staff members** have tested positive for COVID-19—more than *three times* the number of infections from last week.<sup>11</sup>

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<sup>7</sup> *Id.*

<sup>8</sup> See Reality’s Reply Br. at 3, 21-22.

<sup>9</sup> See Reality’s Mot. for Leave to File Supplemental Brief, filed July 13, 2020.

<sup>10</sup> See *id.*

<sup>11</sup> COVID-19 Update, Federal Bureau of Prisons, FMC Carswell (Fort Worth, TX), available at <https://www.bop.gov/coronavirus/index.jsp> (last visited July 22, 2020).

8. Perhaps most important, as set forth in the attached declaration from Alison Grinter, Esq. (local counsel in Texas for Appellant), *Reality herself has contracted the virus*, testing positive for COVID-19 in the last few days,<sup>12</sup> placing her health in danger.

9. Appellant avers that this updated information will assist the Court in determining whether Reality has met her burden to show “extraordinary and compelling” reasons exist under 18 U.S.C. § 3582, compelling her release or, alternatively, whether this matter should be remanded for an emergency evidentiary hearing on the merits of Reality’s compassionate release request.

10. “[T]he appellate court [holds the] inherent equitable powers to supplement the record as justice requires.”<sup>13</sup> The Court’s consideration of Reality’s updated information and evidence about the COVID-19 outbreak at FMC Carswell will not prejudice either party. Both parties have relied on the information about the COVID-19 infection count at Reality’s facility in their prior briefs before this Court,<sup>14</sup> and the information is the type of information for which this Court may take judicial notice.<sup>15</sup>

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<sup>12</sup> See Ex. 1 (Dec. of Alison Grinter, Esq.).

<sup>13</sup> *Dickerson v. State of Ala.*, 667 F.2d 1364, 1367, n.5 (11th Cir. 1982).

<sup>14</sup> See Gov’t’s Br. at 38, n.14; see Reality’s Reply Br. at 32, n.69.

<sup>15</sup> As other courts have held, the information on the BOP’s website may be judicially notice. *Cantrell v. Rhodes*, No. 14-cv-02754- GPG, 2014 WL 6755971, at \*3, n.1 (D. Colo. Dec. 1, 2014) (“This Court may take judicial notice of the information from BOP’s website.”) (citing *Triplet v. Franklin*, 365 Fed. App’x 86, 92 n.8 (10th

11. Undersigned counsel contacted counsel for the United States to ask if they would object to the instant Motion for Leave. The Government is unopposed to the filing of the supplemental information.

WHEREFORE, Appellant Reality Leigh Winner respectfully prays that this Court GRANT this Unopposed Emergency Motion for Leave and permit the filing of the accompanying Declaration of Alison Grinter in support of Appellant's Brief, and that it grant such additional relief as may be warranted.

DATED: July 22, 2020

Respectfully submitted,

/s/Joe D. Whitley

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Cir. Feb. 5, 2010)); *see also See Dickerson v. State of Ala.*, 667 F.2d 1364, 1368 (11th Cir. 1982); *see also* FED. R. EVID. 201; *Coastal Wellness Centers, Inc. v. Progressive Am. Ins. Co.*, 309 F. Supp. 3d 1216, 1220 (S.D. Fla. 2018) (judicially noticing a federal government website).



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*Counsel for Appellant  
Reality Leigh Winner*

**CERTIFICATE OF COMPLIANCE**

The foregoing motion complies with the type-volume limitation of Federal Rules of Appellate Procedure 27(d)(2)(A) and 32(a)(5)(A), (6). The motion contains 1,038 words, excluding those parts of the motion exempt by the Eleventh Circuit Rule 26.1-3(c). This motion complies with the typeface and type style requirements of Federal Rule of Appellate Procedure 32(a)(5) and 32(a)(6) because this motion has been prepared in a proportionately spaced typeface using Microsoft Word 2010 in Times New Roman 14-point font.

Respectfully submitted,

*s/ Joe D. Whitley*

Joe D. Whitley

Georgia Bar No. 756150

*Counsel for Appellant*

*Reality Leigh Winner*

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing has been served upon the following counsel of record by first class mail and/or by electronically filing the foregoing with the Court on this the 22nd day of July, 2020.

Bobby L. Christine  
Jennifer G. Solari  
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s/ Joe D. Whitley  
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